IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6318 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SHIRIN S QURESHI

Versus

NATIONAL INSTITUTE OF FASHION TECHNOLOGY

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Appearance:

1. Special Civil Application No. 6318 of 2003

MR MM TIRMIZI for Petitioner.

MR JB PARDIWALA for Respondent.

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CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 07/11/2003

ORAL JUDGEMENT

1. Rule. Learned Counsel Mr. Pardiwala waives service of rule on behalf of the respondent-institution.

2. The short facts of the case are that the petitioner who is a student got admission in the respondent-institution. There was entrance examination for getting admission after graduation. The petitioner is a Muslim belonging to Qureshi community and it is the case of the petitioner that she bona fide mentioned the category as "SC" because in the category mentioned in the form there were options of General/SC/ST/PHP. The application form came to be filed in the year 2001 and together with the application form, the petitioner had also produced the certificate of the competent authority for showing the community to which the petitioner belongs, and the same was for socially and economically backward community. The petitioner was granted admission on the basis of merit at the entrance examination and the petitioner studied for about three years in the respondent-institution. The petitioner has also paid the fees of about Rs.1,00,000/-per year (total Rs.2.00,000/-) for study purpose in the respondent-institution. After the examination of the final year was over but before viva (oral) test was conducted, it came to the knowledge of the respondent-authority in the year 2003 that the petitioner at the time of getting admission in July, 2001 wrongly mentioned in the column of category as "SC" though the petitioner belonged to "OBC"(SEBC) and therefore, the admission of the petitioner is cancelled and it is under these circumstances, the petitioner has approached this Court.

3. There is no dispute on the point that the petitioner did mention the category as "SC", however, the case of the petitioner is that together with the application form the certificate was also produced and the petitioner mentioned "SC" because she bona fide believed that out of three categories, "SC" is one of the category because her certificate was of "SEBC". It is also the case of the petitioner that after the filling up of the form, she had appeared in the entrance examination and she stood by the merit and she was granted admission in the year 2001. There is also no dispute on the point that the petitioner thereafter has undergone the study during the academic year 2001-2002 and 2002-2003 and the petitioner has successfully completed both the aforesaid academic years. There is also no dispute on the point that except the aforesaid non disclosure/wrong disclosure of the category there is nothing objectionable qua the petitioner while undergoing studies and also for procuring merit in the entrance examinations as well as in the subsequent examinations.

4. Mr. Tirmizi, learned Counsel appearing for the petitioner has relied upon the decision of Rajasthan High Court in the case of HARPHOOL SINGH Vs. STATE OF RAJASTHAN AND ORS. ( AIR 1981 RAJASTHAN 8), to contend that in more or less similar situation the Rajasthan High Court had taken a lenient view and the student who had completed study of MBBS was allowed to appear in the final examination and, therefore, he submitted that similar view may be taken by this Court in the present case also.

5. The learned Counsel Mr. Pardiwala appearing for the institution, however, submitted that, as such, there was no reservation for "SEBC" category and the only reservation was of "SC" category, and therefore, the petitioner, at the time when applied for admission, could have appeared in the entrance examination only if she would have fulfilled the criteria applicable to candidates belonging to general category. Mr. Pardiwala submitted that for the students belonging to general category, for appearing in the entrance examination, the minimum requirement was 50% in the H.S.C. examination and it was only in case of students belonging to "SC" category, the said minimum requirement was less than 50%. Mr. Pardiwala also submitted that since in the application form, the petitioner had shown as "SC" category candidate, even while considering the merit of entrance examination the petitioner was treated as candidate belonging to "SC" category and accordingly she was granted admission and had the petitioner disclosed that she is not of "SC" category then she would have been considered in General category and if the merit order of the candidate belonging to General category is considered the petitioner would not have been entitled to admission to G.M.T. Course, which is two years Post Graduate Cours. Therefore, he submitted that the petitioner has supplied wrong information which has resulted into such consequences. Mr.Pardiwala candidly admitted that the respondent-college did not take any steps in this regard until she completed the study. However, in the submission of Mr.Pardiwala it came to the knowledge of the respondent only in the year 2003 and thereafter immediately the admission is cancelled. He also submitted that had the petitioner not opted for admission in Reserved category of "SC" such seat could have been made available to the other candidate belonging to "SC" category. The petitioner has not only made false representation but has taken undue benefit of such false representation and therefore, he submitted that the petitioner would not be entitled to the reliefs.

6. There cannot be any dispute on the point that any false representation by any student cannot be allowed to be tolerated. Similarly, there cannot be also dispute on the point that a reserved seat should and must go to the category for which reservation is made and nobody else should be allowed to make use of the reserved seat who is not entitled as per the policy of reservation. There can also be no dispute on the point that if a student has made false representation at the time of getting admission, such student cannot be allowed to take any undue benefit of his/her own wrong. However, had it been a case at the time when the student was just admitted, and the admission is cancelled on such ground the matter would be different. This Court while exercising power under Article 226 would have dismissed the petition at the threshold, because normally such student cannot be allowed to invoke the jurisdiction of this Court who himself or herself is party to false representation.

7. But in the present case, three peculiar and irreversible situations have arisen on account of the gap of time. One is that though the certificate which was produced was of "SEBC" category, the college authorities have also not verified the application form with the certificate itself at the time of admission and not only that but thereafter also until the course is completed and even the examinations are over, except viva voce, no steps are taken for cancellation of the examination by the respondent-college. The second is that the petitioner has undergone the studies for a period of about two years and the process of study is completed and it is only at the time of viva voce examination, the admission is cancelled. The third is that, even if this Court is to uphold the decision of the authority of cancelling the admission, the same is not to result into making room for benefitting the "SC" candidate, who otherwise, would have been entitled to admission because even if the admission is cancelled for the seat of 2001, now in the year 2003 no student can be admitted on such seat nor a degree can be conferred on such "SC" candidate. The aforesaid is coupled with one additional aspect that the petitioner is otherwise belonging to "SEBC" category which is also Socially and Economically Backward Class identified by the State Government and it is not the case of the respondent authority that any student belonging to "SC" category had made any complaint when they did not get the admission on reserved quota of S.C. In view of the aforesaid peculiar facts and circumstances, I find that if the impugned order for cancellation of the admission is maintained it may result into wastage of public time and money of not only the

student but also of the respondent-institution because when any student is admitted in any academic course, which is, in the present case, a professional course of Fashion Designing, even if the student pays the fees, the institution itself is also required to incur expenses for maintenance of the college. If the cancellation of admission is maintained it may also result into wastage of time and money, in asmuchas, time consumed for undergoing course for two years cannot be restored back nor such time can be allotted to any person who otherwise would have been entitled for. As such, on account of delay caused in taking action by the respondent-authority, an irreversible situation is created which if allowed to be maintained, would result into damage to all and benefit to none. I am also inclined to make the aforesaid observations in view of the decision in the case of Harphool Singh (supra) as well as another decision of the Delhi High Court in the case of INDER PRAKASH vs. DEPUTY COMMISSIONER ( AIR 1979 DELHI 87), which is also considered by Rajasthan High Court while taking decision in the case of Harphool Singh (supra).

8. However, I am not inclined to fully agree with the reasoning recorded by the Delhi High Court as well as Rajasthan High Court in the above referred cases, and I further find, that the student who has made representation, which as per the case of the institution was false. but as for the student, it was bona fide, cannot be allowed to get away scot free. If such misrepresentations are leniently viewed the consequences would be that a student may be tempted to undertake such type of wrong disclosure or misrepresentation while securing admission in any academic course. Therefore, I find that even if this Court is to ultimately hold that the student should be allowed to appear in the final viva examination since she has already completed the course and on account of delay an irreversible situation has arisen, this Court should impose penalty upon the student so as to have deterrent effect of such conduct on the part of the students. If such penalty is not imposed, it may encourage such false misrepresentation on the part of the students and secondly may result into procuring the benefit without suffering any penalty whatsoever.

9. During the course of hearing, Mr.Tirmizi learned Counsel appearing for the petitioner under instructions has fairly submitted that since it is, in any case, a mistake though may be bona fide, the petitioner would be agreeable to pay the penalty as may be imposed by the Court or any other condition which this Court may find it

proper, and he submitted that the petitioner is also ready to pay the penalty of Rs.50,000/- for such mistake that has occurred in the application form, though otherwise, the petitioner has successfully completed the study. I would have examined the matter further, but in view of the aforesaid submissions made by Mr. Tirmizi, I find it proper to leave the matter at that stage, except observing that the petitioner should also suffer the penalty for life time, to see that such misrepresentation, may be bona fide, will not be leniently viewed and not only the petitioner but other students also may get an example that such misrepresentation is to attract heavy penalty.

10. In view of the aforesaid observations and discussion, I find that the following directions shall meet with the ends of justice:

(A) The petitioner shall pay penalty of Rs.50,000/-within a period of two weeks from today to the respondent-authority and shall also submit written apology for he mistake that has occurred in the application form, with an assurance that such mistake shall never be repeated by her in future during her life time. Such apology shall also be filed with the respondent-authority within a period of two weeks from today.

(B) Upon the petitioner fulfilling the earlier direction, the respondent shall hold the viva voce examination of the petitioner and shall declare the result of the petitioner of final G.M.T. Examination in accordance with law.

The petition is partly allowed to the aforesaid extent. No costs. Rule is partly made absolute accordingly. D.S.

(Jayant Patel,J.)
stanley-jp.